

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

March 3, 2010

**0341**

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Genachowski:

As the deadline approaches for the end of the retransmission consent negotiations over carriage of ABC signals within Cablevision's New York service area, I can lend my voice to those that have expressed hope they will reach a deal. I would also like to express my view, however, that actual discussion of the deal is best left between the respective companies and their viewers, free from government interference or cajoling. The alternative is to ask the government to weigh the relative value of carriage and of particular programming. This is a risky proposition.

Retransmission consent negotiations are private discussions between broadcasters and cable or satellite operators for access to programming on one side and access to pay-TV distribution on the other. They are best left that way. Pay-TV providers have more sources of content and programmers have more sources of distribution than ever before. In light of this competitive marketplace, justification for government intervention has all but evaporated. Both sides to these negotiations hold valuable assets, and both sides appropriately have a legal right to withhold those assets if they do not believe the proposed deal provides the proper value proposition. It is only when both sides face the risk that programming might be dropped that a true market negotiation can take place.

Whether it is programmers asking for access to "must-have" distribution or distributors asking for access to "must-have" content, calls for "standstills," government-forced arbitration or other regulatory meddling should be seen for what they are: attempts by parties to get a leg up in a private negotiation. Indeed, depending on whether they like or dislike where their latest negotiations are headed, programmers and distributors often flip between their support for or

opposition to government involvement. I know of perhaps no better proof that this is a robust marketplace without need of regulatory intervention.

Ironically, government intervention also hinders another often touted public interest: diversity of programming. What distributor will risk experimenting with carriage of unique content if they have a legal right to carry the most popular content of the moment? What programmer will risk investing in new content if there is little shelf space left for the content to get carried after every other programmer has forced its way onto the cable or satellite system?

Service providers and programmers are closest to their viewers and in a better position than the government to weigh the costs and benefits of carriage deals, especially in as competitive and as complex a video marketplace as we have today. If either party dislikes the deal, either is free to walk away. And both have something to lose: viewers.

The viewers, meanwhile, have other providers and plenty of content to choose from if the parties make a bad decision. In fact, with video available in almost every market from at least one cable operator, two satellite providers, the Internet, and increasingly a phone company, the same content is often accessible from at least one other source. It may even be available free over the air or the Internet. This plethora of alternatives and the parties' mutual interest in reaching a deal are perhaps why the vast majority of content negotiations ultimately result in a carriage deal no matter how many times one of the parties or the other threatens to let the screen go dark.

Sincerely,

A handwritten signature in blue ink that reads "Joe Barton". The signature is stylized with a large, sweeping "J" and a cursive "Barton".

Joe Barton  
Ranking Member





OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

April 20, 2010

The Honorable Joe Barton  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter concerning the negotiations for carriage of WABC-DT, a local broadcast television station owned and operated by the Walt Disney Company on cable television systems operated by Cablevision Systems Corporation.

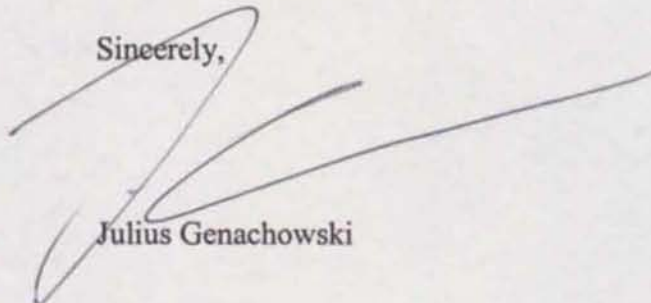
I am pleased that Disney and Cablevision were able to reach a retransmission consent agreement, and WABC was restored to the approximately three million Cablevision subscribers in the New York City area. At the same time, I continue to be concerned about retransmission consent negotiations that interrupt or threaten to interrupt broadcast television service to consumers who subscribe to a multichannel video programming distributor (MVPD). In recent months, the breakdown or near breakdown in negotiations among several broadcasters and MVPDs have caused some to question whether the Commission's current retransmission consent policies have kept pace with changes in the marketplace. To address this concern, late last year I directed the Commission's Media Bureau to begin a review of the Commission's policies and regulations governing retransmission consent negotiations to determine whether the existing framework remains effective, or whether reforms may be necessary to protect consumers and ensure fairness to all parties.

On March 9, 2010, a coalition representing a number of MVPDs and public interest groups submitted a *Petition for Rulemaking* seeking to reform the retransmission consent rules. Among other things, the *Petition* proposes that the Commission establish new mechanisms that provide for mandatory arbitration when a MVPD and the broadcaster are not able to reach a retransmission consent agreement, continued carriage of broadcast signals during the negotiation or dispute resolution process, and the adoption of rules to address the practice of tying broadcast programming to the carriage of nonbroadcast services. The Media Bureau has issued a *Public Notice* inviting public comment on the issues and proposals discussed in the *Petition*. I look forward to reviewing the comments filed in response to the *Notice*, as well as the Bureau's

findings concerning its ongoing evaluation of the current retransmission consent regime. I appreciate your thoughts on the matter, as well, and will take them into account as the Commission examines the retransmission consent mechanism.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

Julius Genachowski